

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

**COURT NO: 10
SUIT NO: FCT/HC/PET/204/2016
BETWEEN:**

EMMANUEL ADEGOKE AFFON.....PETITIONER

AND

BETHEL OGHENERO AFFON.....RESPONDENT

JUDGMENT

By a Petition filed on 22/7/2016 by the Petitioner – Emmanuel Adegoke Affon for dissolution of marriage, and prays the court for the relief contained in Paragraph 10 of the Petition as;

“A Decree for the dissolution of marriage contracted at Abuja Municipal Area Council Marriage Registry on the 26th day of August 2005 on the ground that the marriage has broken down irretrievably”.

The facts upon which the Petitioner seek the dissolution of the marriage as gleaned from the pleadings and evidence are the facts contained in Section 15 (2) (e) (f) of the Matrimonial Causes Act.

The Petition was served on the Respondent on 19/5/2017, Respondent on the other hand did not file an Answer to the Petition, was absent throughout hearing of the Petition and was not represented by counsel of her choice the Petition thus went on as unchallenged.

On 24/4/2018 Petitioner opened his case and testified as PW1, and informed the court that both parties cannot live together as they started having problems, his views were no longer relevant to the Respondent and whatever she says was final. Respondent cannot be corrected and nags.

PW1 further told the court that;

“She does not allow me to have sexual intercourse with her, because of the problem, sometimes cannot stay in the house and on several occasion my family have come to intervene. Finally in 2011, we started living apart till date”

PW1 finally informed the court that since 2011 , when they started living apart they have never come back together, that the marriage did not produce any child, and that the marriage has broken down irretrievably therefore wants the court to dissolve the marriage.

In the course of the Examination-In-Chief of PW1, the Certified True Copy of Marriage Certificate No. 2990 issued by Abuja Municipal Area Council Registry, Abuja evidencing marriage between the Petitioner and the Respondent celebrated on 26/8/2005 was admitted in evidence as Exhibit “A”.

At the close of Petitioner's evidence on 24/4/2018, the case was adjourned to 20/6/2018 for the Respondent to cross-examine PW1 – the Petitioner. The Respondent failed to put up an appearance in court and was not represented by counsel. Upon the application of counsel for the Petitioner, the court ordered the foreclosure of Respondent from Cross-examining PW1 and defending the petition, the case was adjourned for the Petitioner to adopt his Final Written Address.

On 26/2/2020, Apanisile Akinola for the Petitioner adopted their Final Written Address as oral submission in support of the Petition. In the said Final Address, Petitioner's counsel formulated a sole issue for determination, that is;

“Whether the marriage solemnized between the petitioner and the Respondent on 28th August, 2005 at the Abuja Municipal Area Council Marriage Registry, Abuja is not liable to be dissolved on the ground of living apart for a period of more than five years”.

Submits that where it is evidence that couple had lived apart for a period of two (2) years preceding the date of Petition and the Respondent does not object the court is enjoined to hold that the marriage has broken down irretrievably. Refer to Section 15 (2) (e) (f) of the Matrimonial Causes Act and the case of Ibrahim Vs Ibrahim (2007) 1 NWLR (PT.1015) 383, Omotunde Vs Omotunde (2000) LPELR – 10194.

Submits further that the evidence of the Petitioner is unchallenged and uncontroverted and the court should accept and act on the said evidence. Refer to Nwabuoku Vs Ottih (1961) 1 NWLR 487, Balogun Vs UBA Ltd

(1992) 6 NWLR (PT.347) 336 and Odunsi Vs Bangbala (1995) 1 NWLR (PT.374) 641.

Finally, urge court to grant the prayer of the Petitioner.

Having carefully considered the pleadings, evidence of the Petitioner, the submission of counsel as well as the judicial authorities cited, the court finds that only on issue call for determination that is;

“Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore entitled to the reliefs sought”.

First the Respondent, who was served with court processes, failed to file her Answer to the Petition, absent throughout hearing and was not represented by counsel. The implication of this is that the evidence of the Petitioner remains unchallenged. The court have held that where evidence is neither challenged nor controverted court should deem that evidence as true and correct and act on it. See CBN Vs Igwilo (2007) 14 NWLR (PT.1054) 393 @ 406 in the case of Afribank Nig Ltd Vs Moslad Enterprises Ltd (2008) ALL FWLR (PT.421) 879 @ 894 Paragraph E- F Akaahs JCA (as he then was) held this to say;

“ Where a Defendant does not produce evidence or testify or call witness in support of defence, slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s claim”

I am, however quick, to add that, that minimum evidence must be credible enough for court to rely on it. See *Zenegal Ltd Vs Jagal Pharma Ltd* (2007) ALL FWLR (PT. 389) 950 Paragraph F – G.

In the determination of a Petition for dissolution of marriage under Section (1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolved, once a court is satisfied that the marriage has broken down irretrievably. And to come to that conclusion, that Petitioner must prove to the reasonable satisfaction of court any of the facts prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-section (a) – (h).

In the instant case, the Petitioner relies on the grounds contained in Section 15 (2) (e) and (f) as grounds for court to hold that the marriage has broken down irretrievably. The Section 15 (2) (e) reads;

“That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent does not object to a Decree being granted”.

The Section 15 (2) (f) reads;

“That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition”.

To succeed under the said grounds the Petitioner must prove to the reasonable satisfaction of the court that, the parties have lived apart for at least two (2) years, accompanied with termination of consortium and there

is a clear intention on the part of one or both spouses not to return to the marriage and sees the marriage as having come to an end. See Sharp Vs Sharp (1961) 2 FLR 343, Colins Vs Colins (1961) 3 FLR 17 and Famubode Vs Famubode (1977) ICCHCJ 71 all cited in Family Law in Nigeria E.I. Nwogugu HEBN Ibadan 1990, 188.

In prove of the said grounds, Petitioner told the court that consortium between the parties ceased in 2014 and till date the parties have lived apart. That all efforts made to reconcile them yielded no result as it proved abortive. That the parties have never come back together since then. From these pieces of unchallenged evidence of the Petitioner the parties to the marriage have lived apart since 2011 and the Petition was filed on 22/7/2016 a period of more than five years and this satisfy the period of living apart as prescribed by Section 15 (2) (e) and (f) of the Matrimonial Causes Act. The court is also satisfied by the evidence of PW1 that the parties to the marriage do not intend to come together again as man and woman wife. The period of living apart is accompanied with cessation of consortium thus satisfying the grounds relied upon for court to hold that the marriage between the parties have broken down irretrievably I so hold.

From all of these, particularly the evidence of the Petitioner which remained unchallenged and uncontroverted, the Petitioner having hinged his Petition on Section 15 (2) (e) and (f) of the Matrimonial Causes Act as the facts relied, this court finds that the Petitioner has satisfied the requirements under Section 15 (1) of the Matrimonial Causes Act and

therefore hold that the marriage has broken down irretrievably and judgment is accordingly entered in favour of the Petitioner as follows;

- (1) The marriage contracted under the Marriage Act at Abuja Municipal Area Council Registry Abuja on 26/8/2005 between Emmanuel Adegoke Affon – the Petitioner and Bethel Oghenero Affon – the Respondent has broken down irretrievably.

In the absence of anything to the contrary, this order of Decree Nisi shall become absolute after a period of three (3) months from the day of Judgment.

HON. JUSTICE O.C. AGBAZA

Judge

13/7/2020

APANISITE AKINOLA ESQ FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT